

Cite as 2009 Ark. 570

SUPREME COURT OF ARKANSAS

No. 09-1140

DENNIS KEITH HODGES;
CHARLES L. UNDERWOOD;
BRENDA GAIL UNDERWOOD;
MICHAEL BRADLEY UNDERWOOD,

APPELLANTS,

VS.

DIRECT NATIONAL INSURANCE
COMPANY,

APPELLEE,

Opinion Delivered November 12, 2009

MOTION TO DISMISS APPEAL

MOTION GRANTED.

PER CURIAM

Appellee, Direct National Insurance Company, by and through its counsel, Barber, McCaskill, Jones & Hale, P.A., has filed a motion to dismiss appeal. On August 31, 2009, the Pulaski County Circuit Court granted summary judgment in favor of Direct National. On September 22, 2009, appellant, Dennis Keith Hodges, filed an amended notice of appeal, which designated the entire record, including a hearing in which his counsel proffered certain exhibits for appeal. However, on October 13, 2009, Direct National filed its motion to dismiss the appeal, arguing that neither Hodges, nor his counsel, had requested or made financial arrangements to obtain the hearing transcript as required by Rule 3(e) of the Arkansas Rules of Appellate Procedure—Civil.

Rule 3(e) states, in pertinent part, that a notice of appeal:

[s]hall designate the judgment, decree, order or part thereof appealed from and shall designate the contents of the record on appeal. The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made any financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510(c).

Ark. R. App. P. –Civil 3(e) (2009).

Here, Hodges failed to include a statement in his notice of appeal that he had ordered the transcript or made financial arrangements with the court reporter. This court has noted that the procedural steps outlined in Rule 3(e) require only substantial compliance, provided that the appellee has not been prejudiced by the failure to comply strictly with the rule. *See Rogers v. Tudor Ins. Co.*, 325 Ark. 226, 925 S.W.2d 395 (1996). However, we have also held that there is no substantial compliance when the transcript is not actually ordered or when the notice of appeal declares that the transcript has been ordered when, in fact, it has not been. *See McElroy v. American Med. Int'l, Inc.*, 297 Ark. 527, 763 S.W.2d 89 (1989); *Hudson v. Hudson*, 277 Ark. 183, 641 S.W.2d 1 (1982).

In the instant case, there was no compliance with Rule 3(e), substantial or otherwise. The rule was completely ignored until after Direct National's motion to dismiss was filed. In his response to the motion to dismiss appeal, Hodges attached an affidavit from the court reporter that she had been contacted on or about October 16, 2009, three days after the

motion to dismiss was filed, that the transcript had been requested, and that financial arrangements had been made to pay for the transcript. To date, a record has not been tendered with this court.¹ Therefore, we grant Direct National's motion to dismiss the appeal.

Appeal dismissed.

¹This court has previously held that the purpose underlying Ark. R. App. P.–Civ. 3(e) is satisfied when an appellant has lodged a record with our clerk prior to the submission of an appellee's motion to dismiss. See *Quality Fixtures v. Multi-Purpose Fac. Bd.*, 334 Ark. 209, 970 S.W.2d 815 (1998) (per curiam); *Green v. Williford*, 331 Ark. 533, 961 S.W.2d 766 (1998) (per curiam).